

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ROQUE “ROCKY” DE LA FUENTE,

Plaintiff,

v.

KIM WYMAN, in her official capacity as the
Secretary of State of the State of Washington,

Defendants.

Case No. 3:16-cv-5801

**COMPLAINT FOR INJUNCTIVE &
DECLARATORY RELIEF**

Plaintiff, ROQUE “ROCKY” DE LA FUENTE (hereinafter either “Roque De La Fuente” or “Mr. De La Fuente”), files this civil action for emergency mandamus and prospective equitable relief against defendant KIM WYMAN, in her official capacity as the Secretary of State of the State of Washington, requesting emergency preliminary and permanent injunctive and declaratory relief prohibiting defendant from enforcing RCW 29A.56.660 of the Revised Code of Washington, in violation of the First and Fourteenth Amendments to the United States Constitution.

I. NATURE OF THE COMPLAINT

1. This is a civil rights action brought pursuant to 42 U.S.C. § 1983 to enforce rights guaranteed to plaintiff under the First and Fourteenth Amendments to the United States Constitution.

4. The ten (10) day publication and notice requirement of RCW 29A.56.620 of the Revised Code of Washington is a severe impairment of “core political speech” afforded the highest protection by the United States Supreme Court under the First and Fourteenth Amendments to the United States Constitution for which defendant cannot justify as narrowly tailored to advance a compelling governmental interest.

5. The ten (10) day publication and notice requirement of RCW 29A.56.620 of the Revised Code of Washington is a severe impairment of “core political speech” afforded the highest protection by the United States Supreme Court under the First and Fourteenth Amendments to the United States Constitution which does not advance an important regulatory interest.

6. As a direct, proximate and sole result of defendant's enforcement of RCW 29A.56.620 of the Revised Code of Washington, plaintiff has been denied access to the 2016 Washington general election ballot for the office of President of the United States.

7. All of plaintiffs' foregoing allegations are based upon information and belief.

II. JURISDICTION

8. Jurisdiction lies in this Court under 28 U.S.C. § 1331, providing that district courts shall have original jurisdiction of all civil actions arising under the Constitution of the United States.

10. Venue is proper in the United States District Court for the Western District of Washington, Tacoma Division under 28 U.S.C. § 1391 as defendant exercises her authority within the Western District of Washington, maintain offices within this district and all of the operative acts or omissions have or will occur in this district.

11. Plaintiff, Roque De La Fuente, is an independent candidate for President of the United States in the 2016 general election. Plaintiff intends to be a candidate for President of the United States in the 2020 general election. Plaintiff timely filed election petitions with defendant contain a sufficient number of valid signatures to place his name on Washington's 2016 general election ballot for the office of President of the United States. Plaintiff is a resident of the State of Florida residing at 625 West Winter Park Street, Orlando, Florida.

12. Defendant, Kim Wyman is the Secretary of State for the State of Washington and is charged with enforcement of the election laws of the State of Washington. Defendant rejected plaintiff's 2016 nominating petition to appear on the 2016 Washington general election ballot as a candidate for the office of President of the United States for the sole reason that circulators of plaintiff's nominating petitions for President of the United States did not fully comply with the requirements of RCW 29A.56.660 of the Revised Code of Washington. Defendant's place of business is located at 416 Sid Snyder Avenue S.W., Legislative Building, Olympia, Washington, 89504.

13. Plaintiff is an independent candidate for the office of President of the United States in the 2016 general election.

1 14. Plaintiff intends to be a candidate for the office of President of the United States
2 in the 2020 general election.

3 15. The State of Washington requires independent candidates for the office of
4 President of the United States to submit to the Washington Secretary of State 1,000 valid
5 signatures of registered Washington voters, recorded on nominating petitions promulgated by
6 defendants in order to appear on the Washington's 2016 general election ballot to elect the
7 plaintiff's slate of presidential electors to the Electoral College.

8 16. Plaintiff timely filed over 2,000 valid signatures on, or about, July 23, 2016 with
9 defendant.

10 17. On August 5, 2016, defendant rejected plaintiff's nominating petitions for the
11 sole reason that plaintiff and plaintiff's circulators failed to comply with the provisions of RCW
12 29A.56.620 of the Revised Code of Washington which requires a ten (10) days advance public
13 notice via published in newspapers before circulators of election petitions may solicit signatures
14 from registered voters of the State of Washington.

15 18. Specifically, Washington requires that independent candidates for President of
16 the United States must provide ten (10) days' notice, published in a newspaper, prior to the
17 holding of the required "convention" where signatures may be recorded on plaintiff's
18 nominating petition to be filed with defendant.

19 19. The definition of the mandatory "convention" sufficient to satisfy Washington
20 election law has been dumbed down to include door-to-door petitioning in a locale and the
21 setting up of a table outside a box store, such as Walmart or Home Depot.

22 20. Accordingly, because the definition of a "convention" has been watered down to
23 mean any petitioning activity, the ten (10) day notice requirement mandated by RCW
24 29A.56.620 of the Revised Code of Washington, imposes a ten day public notice requirement in
25 advance of any normal petitioning activity protected under the First and Fourteenth
26 Amendments to the United States Constitution.

1 21. As an independent candidate for the office of President of the United States,
2 there are no party members to notify of an actual convention, such as would be expected of
3 political parties with an established membership who might need sufficient notice to attend an
4 actual nominating convention held on a specific date and time at a venue normally designed to
5 hold such meetings.

6 22. RCW 29A.56.620 of the Revised Code of Washington constitutes a prior
7 restraint of “core political speech” afforded the highest level of protection under the First and
8 Fourteenth Amendments to the United States Constitution which serves no legitimate state
9 interest.

10 23. RCW 29A.56.620 of the Revised Code of Washington imposes a severe
11 restriction of “core political speech” which is not narrowly tailored to advance any, let alone a
12 compelling, governmental interest.

13 24. RCW 29A.56.620 of the Revised Code of Washington does not advance any
14 legitimate regulatory interest.

15 25. RCW 29A.56.620 of the Revised Code of Washington, as applied to independent
16 candidates, fails to protect any legitimate interest – whether public or private – necessary to
17 justify prior restraint of “core political speech” afforded protection under the First and
18 Fourteenth Amendments to the United States Constitution.

19 26. RCW 29A.56.620 of the Revised Code of Washington, as applied to independent
20 candidates, is not narrowly tailored to advance a compelling governmental interest necessary to
21 justify impairment “core political speech” afforded protection under the First and Fourteenth
22 Amendments to the United States Constitution.

23 27. RCW 29A.56.620 of the Revised Code of Washington places the protections
24 afforded to political speech under the First and Fourteenth Amendments to the United States
25 Constitution in abeyance until after the completion of the ten (10) day notice provision of the
26 challenged statute.

VII. COUNT II

(RCW 29A.56.620 of the Revised Washington Code, As-Applied to an Independent Candidate for Federal Office, Imposes a Severe Impairment of Core Political Speech in Violation of Rights Guaranteed Under the First and Fourteenth Amendments to the United States Constitution Constitutes)

35. Plaintiff reasserts each preceding allegation as if set forth fully herein.

36. RCW 29A.56.620 of the Revised Code of Washington prohibits speech protected under the First and Fourteenth Amendments to the United States Constitution until after the expiration of a ten (10) day notice period after publication in a newspaper.

37. Defendant's enforcement of RCW 29A.56.620 of the Revised Code of Washington constitutes a severe impairment of political speech which is not narrowly tailored to advance a compelling governmental interest in violation of rights guaranteed to plaintiff under the First and Fourteenth Amendments to the United States Constitution.

38. Defendant's enforcement of RCW 29A.56.620 of the Revised Code of Washington does not advance a legitimate regulatory interest sufficient to warrant the impairment of "core political speech" protected under the First and Fourteenth Amendments to the United States Constitution.

39. Defendant's enforcement of RCW 29A.56.620 of the Revised Code of Washington is the sole and proximate cause of the harm to rights guaranteed to plaintiff under the First and Fourteenth Amendments to the United States Constitution.

40. Accordingly, defendant's enforcement of RCW 29A.56.620 of the Revised Code of Washington, as applied to independent candidates for the office of President of the United States, impairs rights guaranteed to plaintiff under the First and Fourteenth Amendments to the United States Constitution for which plaintiff demands adequate equitable remedy.

VIII. REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

1 a. Preliminarily enjoin defendants from enforcing RCW 29A.56.620 of the Revised
2 Code of Washington;

3 b. Permanently enjoin defendants from enforcing RCW 29A.56.620 of the Revised
4 Code of Washington;

5 c. Declare RCW 29A.56.620 of the Revised Code of Washington unconstitutional
6 as applied to independent candidates for President of the United States;

7 d. Award plaintiff the cost of this action together with their reasonable attorneys'
8 fees and expenses pursuant to 42 U.S.C. §1988; and,

9 e. Retain jurisdiction of this action and grant plaintiff such other relief which may
10 in the determination of this Honorable Court to be necessary and proper.

11
12 DATED this 19th day of September, 2016.

13 BADGLEY MULLINS TURNER PLLC

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